3843; and in view of the "adopting" provision must be taken to mean either natural or adopting parents, but not both.

EASEMENTS—OF NECESSITY—EXTINGUISHMENT.—The plaintiff had leased a restaurant from the defendant hotel-keeper. By oral understanding the lessee could use the adjoining hotel lavatory. At the time of trial, but not at the time of leasing, there were other such facilities available for the restaurant. The plaintiff seeks to enjoin the lessor from removing the hotel lavatory. *Held,* injunction refused, the plaintiff having no easement of necessity. *Harrison* v. *Ziegler* (Cal. 1921) 196 Pac. 914.

Easements of necessity are said to arise by implied grant or reservation. See *Cherry* v. *Brizzolara* (1909) 89 Ark. 309, 316, 116 S. W. 668; 2 Tiffany, *Real Property* (enlgd. ed. 1920) 1295 *et seq.* Where a grantor retaining an alleged dominant tenement claims such an easement over his grantee's land, absolute necessity must be shown. *Cherry* v. *Brizzolara, supra.* But where the grantee claims the way, he need show only reasonable necessity. *Paine* v. *Chandler* (1892) 134 N. Y. 385, 32 N. E. 18; see (1914) 14 COLUMBIA LAW REV. 84; *contra, Buss* v. *Dyer* (1878) 125 Mass. 287. However, mere convenience is insufficient. *Walker* v. *Clifford* (1900) 128 Ala. 67, 29 So. 588. The necessity doctrine, probably available for a period to the lessee in the instant case, was no longer so at the time of trial. For such an easement does not outlive the necessity which gives rise to it. See *Palmer* v. *Palmer* (1896) 150 N. Y. 139, 147, 44 N. E. 966; (1911) 11 COLUMBIA LAW REV., 478; 2 Tiffany, *op. cit.* 1368. Nor, because of the Statute of Frauds, could the oral understanding be claimed to create an easement. *Hall* v. *McLeod* (1859) 59 Ky. 98. Being merely a license, it was revocable, and the injunction was properly denied.

EVIDENCE — CONFRONTATION OF WITNESSES — TESTIMONY AT FORMER TRIAL IN ABSENCE OF WITNESSES FROM JURISDICTION.—At the trial of the defendant, the prosecution introduced testimony which had been given in the police court by a witness who subsequently disappeared. *Held,* such evidence is admissible. *State* v. *Gaetano* (Conn. 1921) 114 Atl. 82.

The death of a witness is universally considered sufficient to allow the use of his former testimony. *Mendenhall* v. *U. S.* (1911) 6 Okla. Cr. 436, 119 Pac. 594; *In re Durant* (1907) 80 Conn. 140, 67 Atl. 497. The absence of a witness from the jurisdiction is similarly treated by most courts. *State* v. *Harmon* (1904) 70 Kan. 476, 78 Pac. 805. This is, however, denied by some in criminal cases. *State* v. *Nicholas* (1910) 149 Mo. App. 121, 130 S. W. 96. By the better opinion, inability to find the witness is an equally sufficient reason for admitting his former testimony. *Pope* v. *The State* (1913) 183 Ala. 61, 63 So. 71; *contra, State* v. *Wing* (1902) 66 Ohio St. 407, 64 N. E. 514. The constitutional provision that an accused person shall be confronted by the opposing witnesses is generally said to be declaratory of the common law rule debarring hearsay evidence; and so subject to all the exceptions to that rule. See *State* v. *McO'Blenis* (1857) 24 Mo. 402, 414 *et seq.* The chief reasons for the exclusion of hearsay evidence are want of sanction of an oath and opportunity to cross-examine. See *Minneapolis Mill Co.* v. *Minneapolis & St. L. Ry. Co.* (1892) 51 Minn. 304, 315, 53 N. W. 639. Testimony taken at a former hearing is not subject to these objections and is therefore not really an exception to the hearsay rule. See *Minneapolis Mill Co.* v. *Minneapolis & St. L. Ry. Co., supra, loc. cit.* The introduction of the testimony in the instant case worked no hardship on the defendant who had had the all important opportunity of cross-examination.

FEDERAL TRADE COMMISSION—POWER TO PREVENT UNFAIR METHODS OF COMPETI-

TION—DECEPTIVE PRACTICES.—The plaintiff manufactured underwear which was composed of only a small proportion of wool mixed with other materials, but he sold the same labeled "wool." The practice was general in the trade, so that no one in the trade was deceived, although consumers may have been. *Held,* this was a mere misdescription and not an unfair method of competition, and so without the province of the Federal Trade Commission. *Winsted Hosiery Co.* v. *Federal Trade Commission* (C. C. A. 2d Cir. 1921) 272 Fed. 957.

The Commission is empowered to prevent the use of unfair methods of competition if it shall appear to be in the interest of the public. (1914) 38 Stat. 717, §5, U. S. Comp. Stat. (1916) §8836e. The term "unfair methods of competition" was used in the act to avoid the technical term "unfair competition." See (1920) 20 COLUMBIA LAW REV. 328, 331. The decision in the principal case turns on the point that since all manufacturers alike engaged in deceiving the public the practice had no effect on competition. But the court leaves out of consideration the unfairness to a manufacturer of real all wool underwear; and though it admits the possibility of a manufacturer preferring not to use a misleading label, it says nothing of his being prevented from so doing by the practice of his competitors. Under the act no actual damage to any competitor need be shown; it is sufficient that the practice has a capacity or a tendency to injure competitors. See *Sears, Roebuck & Co.* v. *Federal Trade Commission* (C. C. A. 1919) 258 Fed. 307, 311. The fact that tradesmen were not deceived should make no difference, if the consuming public was. This is so because the purchases by retailers are governed by their sales to the public. *Cf. Photoplay Pub. Co.* v. *La Verne Pub. Co.* (C. C. A. 1921) 269 Fed. 730.

INFANTS—INJUNCTIONS—REFUSAL TO GRANT WHERE PLAINTIFF IS UNDER MORAL OBLIGATION.—The defendant contracted with the infant plaintiff for her services. Before these contracts had expired and while yet an infant, the plaintiff, representing that she was free to contract, agreed to serve the K Corporation. The defendant notified the K Corporation of its contract and agreed to bear the latter harmless for refusing to perform. The plaintiff seeks to have the contracts with the defendant declared void, and to enjoin the defendant from asserting the validity of these contracts, and from interfering with her new contract relations. *Held,* for the defendant, on the ground that the plaintiff does not come into equity with "clean hands." *Carmen* v. *Fox Film Corp. et al.* (C. C. A. 2d Cir. 1920) 269 Fed. 928.

The plaintiff was under no legal obligation to the defendant. *International etc. Book Co.* v. *Connelly* (1912) 206 N. Y. 188, 99 N. E. 722. She had not, therefore, made a false representation to the K Corporation; and it was bound by its contract. The defendant by its agreement with the K Corporation was inducing the breach of a contract, an actionable wrong, which may be enjoined. *Associated Press* v. *International News Service* (C. C. A. 1917) 245 Fed. 244, *aff'd* (1918) 248 U. S. 215, 39 Sup. Ct. 68. Conceding that the plaintiff was under a moral obligation to the defendant, it does not follow that she should be denied relief. By the weight of authority courts of equity lend their aid to an infant even though the consideration for his promise has been squandered. *Brant'ey* v. *Wolf* (1882) 60 Miss. 420; see *Gillespie* v. *Bailey* (1877) 12 W. Va. 70, 92-94; *cf. Whyte* v. *Rosencrantz* (1899) 123 Cal. 634, 56 Pac. 436 (by statute). It is submitted that under the better reasoned cases equity has also granted relief even though the infant has falsely represented himself to be an adult. *Sims* v. *Everhardt* (1880) 102 U. S. 300; *Tobin* v. *Spann* (1908) 85 Ark. 556, 109 S. W. 534; *contra, County Board of Education* v. *Hensley* (1912) 147 Ky. 441, 144 S. W. 63; *Ostrander* v. *Quin* (1904) 84 Miss. 230, 36 So. 257.